



*The*  
**UNIVERSITY**  
*of* **VERMONT**

OFFICE OF THE GENERAL COUNSEL

June 25, 2010

School Participation Team  
ATTN: Ms. Linda Shewack  
U.S. Department of Education  
Federal Student Aid/PC/SEC  
830 First Street, NE – UCP3, Room 74B1  
Washington, DC 20002

Re: Response to Program Review Report  
Dated May 10, 2010

Dear Ms. Shewack and School Participation Team:

Please accept this written response and enclosed documents as the University of Vermont's response to the Program Review Report dated May 10, 2010. Specific responses to the findings in the report follow:

**Finding # 1: Inaccurate Reporting of Crime Statistics**

This finding includes that the University did not include all reported sex crimes in its report to the Department of Education for 2007. Some anonymously reported sexual assaults were included in statistics in the University's "Public Safety at the University of Vermont" website, but were not included in the final statistics submitted to the Department. Additionally, the finding indicates that the University did not categorize some of these assaults as "forcible" or "non-forcible." The Program Review Report notes that the "anonymous" reports were made to the Women's Center – Victim's Advocate and subsequently reported to Police Services.

To remedy this finding, the University must develop procedures to ensure that correct information is reported to the Department from the data compiled. Additionally, the University

must determine which of its campus security authorities meet the exemption from mandatory reporting because they are professional counselors.

With regard to accurate reporting of data compiled, it appears from the University's record that the "anonymous" sexual assault cases were not included in the annual report to the Department for 2007 based on a mistaken belief that these anonymous reports were not required to be included in that report. The University of Vermont Police Services has changed this practice and all reports of Clery offenses, whether or not made "anonymously," are now included in the annual report to the Department. The University of Vermont Department of Police Services has adopted the following procedure with regard to anonymous reports:

- All anonymous reports received of Clery incidents will be included in both the University's security report and in the annual report submitted to the Department of Education. Where insufficient information is available due to the anonymous nature of a report to make an accurate determination of whether an anonymous report of sexual assault should be recorded as a "forcible sexual assault" or "non-forcible sexual assault," a determination will be made based on best information available, with explanation as necessary as a caveat in the annual report to the Department of Education.

Additionally, over the course of the past year, the University has identified all Campus Security Authorities and has conducted a series of training sessions with the Campus Security Authorities. The training sessions have included materials on what conduct must be reported to Police Services to comply with our obligations to compile and report data on Clery offenses, including sexual offenses. Campus Security Authorities at the University include:

- Personnel in the University's department of Police Services;
- Deans, Directors and Department Heads;
- Assistant Directors in Athletics and coaches;
- faculty and staff advisors to student organizations and clubs;
- staff with responsibility for student advising and programming;
- Associate Residential Directors and Resident Assistants;
- Assistant Director of Greek Life;
- Assistant Directors in the Center for Student Ethics and Standards;
- Assistant Deans in the office of student services for each college and school.

The Women's Center staff, including the Victim's Advocate, have significant responsibility for student and campus activities and thus are Campus Security Authorities. Women's Center staff are neither pastoral nor professional counselors as defined in 34 C.F.R.668.46(a) and the training provided has made clear that the Women's Center staff are mandated reporters for Clery incidents. A copy of the training materials is included with this

response. The only individuals at the University who qualify for the exemption for professional or pastoral counselor are the professional mental health counselors at the University's Counseling Center and Center for Health and Well-Being and University affiliates who are members of the University's Spiritual and Religious Life Council and who are members of a religious order and are recognized by that order as someone who provides confidential counseling.

In response to this finding it should also be noted that not all anonymous reports of sexual assault are made to Police Services via the Women's Center. The Police Services webpage has a link where anonymous reporting of crime may be made. Additionally, any individual may make an anonymous report via telephone. When an anonymous report is made by the web or by phone, and no information is left that would allow for further fact-gathering, Police Services may not have adequate information to make a fully informed determination as to whether an anonymously reported sexual assault should be classified as "forcible" or "nonforcible." Under these circumstances, Police Services will use the best information available to make a determination and appropriate designation on the annual report.

#### **Finding # 2: Crime Log Deficiencies**

This finding includes the failure to include one burglary that appears on the daily crime log for calendar year 2007 in the annual report statistics provided to the Department for that year. Additionally, it was not clear that the crime log was updated appropriately in all cases. The University is required to develop a means of compiling and recording data so that an audit trail is established. The University must also appropriately update its daily crime log.

The University of Vermont Department of Police Services has adopted the following procedures in response to this finding:

- Each month Clery reportable crimes reported to UVM Police Services will be identified and listed by crime type and incident report number. This list will be checked against the daily crime logs to ensure the logs reflect the correct crime classification and disposition.
- If there has been a change in the crime classification or disposition (example - an incident originally reported as a vandalism with an "Open" disposition in the crime log. Subsequent investigation determines this was a Burglary and an arrest was made for the Burglary) the appropriate updates will then be made to the crime log within two days.
- If a change in crime classification or disposition is known prior to this monthly review, the appropriate updates to the crime log will be made at that time - not waiting for the monthly review.
- Each monthly list of Clery reportable crimes will be held on file for use in determining the total number of reportable crimes in the annual Clery Report at the end of the year.



### **Finding # 3: Insufficient Information Regarding Timely Warning**

This finding states that the University's timely warning policy is not sufficient in that it does not describe the mode of communication in which warnings will be made in the case of an imminent threat. Compliance requires that the University include this information in its annual security report, including notice of all modes of communication that will be used to alert the campus community of any imminent threats when a timely warning is necessary. The University is further encouraged to move the timely warning information from the "Off-Campus Crime" section to its own heading.

The timely warning information in the annual security report will appear under its own heading and will provide as follows:

When a significant incident occurs on campus, or in a geographic area near to campus, that represents a continuing threat to the safety of the UVM community, a timely warning will be made. The decision whether to issue a timely warning will be made on a case by case basis through consultation by appropriate University officials, including but not limited to: Chief of University Police/Director of Police Services, Vice President of Executive Operations/Chief of Staff, Associate Vice President for Administrative and Facility Services, Assistant Vice President for Student and Campus Life. Consultation with other University officials will occur as needed.

A warning will not be issued if it is determined that the risk of jeopardizing a criminal investigation outweighs the benefit to the campus community of a particular warning. Periodic updates to timely warnings will be disseminated as information becomes available.

Timely warnings may be distributed through the University's Emergency Notification system, which may include communication via: e-mail; campus, cell and/or home voice mail; text messages, and/or as a Campus Alert/Advisory. The University's Emergency Notification system, *CatAlert*, automatically sends an e-mail communication to all members of the University community. All members of the University community may also opt to have emergency notices sent to them by any or all of the following: text message and/or voice message to a cell phone, campus phone and/or home phone. A Campus Alert/Advisory will be issued when a crime that represents a possibility of ongoing threat to the campus community occurs and information is available that may be shared with the campus community that could lead to further information about a perpetrator and/or provide information that would allow individuals to take appropriate precautions to avoid crime. A Campus Alert/Advisory includes information about actions individuals may take to help prevent further criminal activity. Campus Alerts/Advisories are disseminated via e-mail to all UVM faculty, staff and students.

Additionally, hard copies of Campus Alerts/Advisories are placed around campus in areas frequented by students, faculty and staff.

The procedures of the University's Department of Police Services related to such warnings are enclosed.

**Finding # 4 Sexual Assault Policy Insufficient**

This finding states that the University has not included the statement that both the accuser and accused in cases alleging sexual assault have the same opportunity to have others present during disciplinary proceedings in all necessary policies. In response to this finding, the University has made an interim modification to the Sexual Assault Policy, adding the following language:

Victims also have the right to initiate and participate in a student judicial process where the individual accused is a student. Both the accused and accuser in a student disciplinary proceeding involving allegations of sexual assault have the right to have others present during a disciplinary hearing. Procedures applicable to student disciplinary proceedings are found in the Code of Students Rights and Responsibilities, <http://www.uvm.edu/policies/student/studentcode.pdf>

This same language will be added to the University's crime report, Public Safety at the University of Vermont, on page 11 in the section titled "Toward a Sexual Assault Free Campus."

**Finding # 5 Failure to Distribute the Campus security Report in Accordance with Federal Regulations**

This finding provides that the University failed to include the exact URL for the campus security report in its annual report. The University's annual campus crime report will now include the link directly to the report, rather than a link to the Police Services webpage. The link that will be used is: <http://www.uvm.edu/police/reports/clery/2009.pdf>

I hope that these responses are complete and helpful to you. If you need any clarification or further information, please do not hesitate to contact me.

Sincerely,



Lucy A. Singer  
Senior Associate Counsel

Cc: Gary Derr  
Lianne Tuomey



*The*  
**University  
of Vermont**

**Department of Police Services**

<b>Department Directive #</b> <b>OPS - 902</b>	CALEA Standards
<b>Subject: Alert/Advisory</b> <b>Bulletins and Clery Act</b>	54.1.1 (b); 85.1.1; 85.1.2; 85.1.3
Rescinds All Previous Directives	Issue Date: 2002/10/30
Effective Date: 2002/10/30	Reviewed/Revised Date: 2007/07/09

**Purpose:**

The purpose of this policy is to assure the distribution of timely and accurate information to the University of Vermont community to meet the needs of the community and the Federal crime reporting regulations.

**Policy:**

It is the policy of UVM Police Services to serve the needs of the UVM community by informing them about crime activities and to maintain compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.

**I. Definitions**

- A. Press Release – Is a planned release of information to all media sources, and the general campus community.
- B. Campus Advisory – Is used to distribute information when general activity trends are observed. They are used to inform and to enlist the assistance of all community members in crime prevention activities. Examples include: bike larcenies around campus, larcenies from laundry areas, etc.

- C. Campus Alert – is used with a specific problem of safety or disorder on campus has been identified. Examples include: trespassers, assaults, particular suspects in criminal activity, etc. Alerts are used to heighten the campus community's awareness of a particular safety issue, and to enlist their assistance in resolving a specific issue, or increase crime prevention awareness and/or activities. In situations that call for immediate alerts to the campus community, the supervisor shall authorize the release of information and assure that the Chief/Director and Operations Captain are notified.
- D. Public Information Officer (PIO) – is the Chief/Director or his/her designee.

**II. Recommendation Process (54.1.1 b) (85.1.2 a)**

- A. Any department employee may suggest an advisory, alert, or press release to provide a timely warning about reported crimes. The recommendation should contain the general data used to note the trend or event, and the suggested text for the document.
- B. Those recommendations should be forwarded to the Operations Captain.
- C. The Operations Captain should review and approve all formal releases of information to the media and campus community prior to the release of information. The Operations Captain should forward releases to the Chief/Director for final approval, if practical.

**III. Distribution (85.1.2 b)**

- A. Alert and Advisory text will be placed on the pre-printed forms for the campus distribution, and posted on the website.
- B. Generally, the bulk of the copies should be provided to Residential Life and distributed to other academic buildings as appropriate.
- C. In special circumstances, the Chief/Director may use the campus-wide E-mail and voice-mail distribution lists for dissemination.
- D. A copy should be dated and forwarded to the Accreditation Manager, with a copy placed in the squad room and one in the Communications Center.



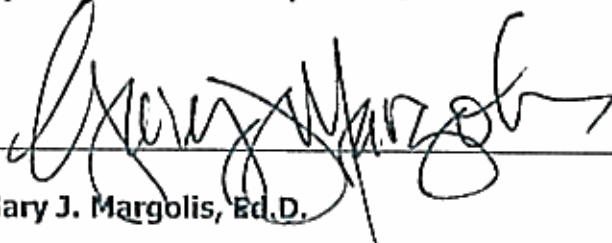
**IV. Annual Campus Security Report (85.1.1)**

The Administrative Lieutenant and the Chief/Director are responsible for putting together and distributing the annual Campus Security Report. This report is required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery law), codified as 20 USC 1092 (f) as part of the Higher Education Act of 1965 and discloses timely specific information and annual summary information about campus crimes and security policies. This report will be completed annually in October.

**V. Daily Crime Log (85.1.3 a & b)**

UVM Police will maintain a daily crime log which records crimes reported to the agency. The log will include the nature, date, time, and general location of each crime and the disposition of the complaint, if known. This log will be posted daily on the UVM Police web-site which is available for public inspection. A hard copy will be maintained in the Communications Center for a 60 day period for public inspection during normal business hours.

By Order of the Chief/Director



Gary J. Margolis, Ed.D.





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**Department of Police Services**

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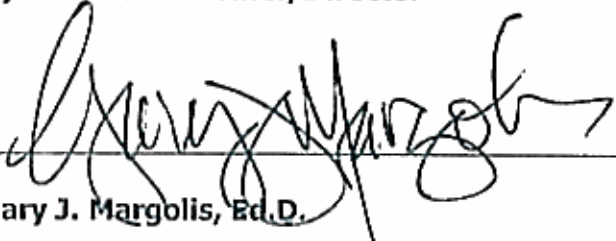
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**By Order of the Chief/Director**



Gary J. Margolis, Ed.D.

## "MANDATORY" REPORTING REQUIREMENTS

### I. CAMPUS SECURITY ACT (20 U.S.C. 1092 (f)) or "CLERY ACT" REPORTING

Enacted in 1990, the Campus Security Act requires institutions of higher education to collect and report certain campus crime statistics and campus security policies. Senator Arlen Specter sponsored the law at the urging of Security on Campus ([www.socoline.org](http://www.socoline.org)), which was founded by a Pennsylvania couple, Howard and Connie Clery, after their daughter was raped and murdered inside her Lehigh University dorm room.

#### A. Who Must Report

Local police agencies; and

Campus Security Authorities:

- (1) Campus law enforcement unit.
- (2) An individual or organization specified by the campus security policy as the individual or organization to whom students and employees should report crimes.
- (3) An official of an institution who has significant responsibility for student and campus activities but does not have significant counseling responsibilities.

The DOE has provided the following non-exhaustive list of employees who will be considered Campus Security Authorities:

Dean of Students  
Student Activity Directors  
Team Coaches  
Faculty Advisors to Student Groups  
Student Affairs Professionals  
Athletic Directors

Certain professionals are excluded from duty to report: limited to licensed counselors/mental health professionals and pastoral counselors

#### B. Crimes That Must Be Reported

**Murder:** The willful (non-negligent) killing of one human being by another.

**Rape:** any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent.

**Forcible Sodomy:** Oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim



is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity. If a victim is both raped and sodomized in one incident, then both offenses should be reported.

***Sexual Assault w/object:*** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

***Forcible Fondling:*** The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

***Incest:*** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

***Statutory Rape:*** Non-forcible sexual intercourse with a person who is under the statutory age of consent.

***Robbery:*** The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or putting the victim in fear.

***Aggravated Assault:*** An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm.

***Burglary:*** The unlawful entry of a structure to commit a felony or a theft.

***Vehicle Theft:*** The theft or attempted theft of a motor vehicle.

### **C. Locations**

Any building owned or controlled by an institution within the same contiguous geographic area and used by the institution in direct support of or in a manner related to the institution's educational purposes.

Any building owned or controlled by a student organization recognized by the institution.

Any building or property controlled by the institution but owned by a third party.

### **E. Bias Incident Protocols**

These protocols are found on the AAEO website. Upon becoming aware of a "bias incident," members of the University community are *encouraged* to call 911 if there are injuries; if no injuries or threat of injury, to contact AAEO, Dean of Students Office or Police Services. Individuals are also encouraged to preserve any available physical evidence.

### **F. Sexual Assault**

"University officials" are *required* to report to the appropriate office/supervisor if they become aware that a student or employee has been accused of sexual assault. "University Official" includes: "supervisor, manager or higher level employee; a chair, director or dean of an academic unit; any other person with a title at the level of Director or higher; Student Affairs personnel with oversight responsibilities for students or employees." When the accused is a student, the appropriate office is CSES; when the accused is an employee or volunteer, the appropriate office is the Vice President to whom the employee/volunteer reports. Victims are encouraged to report to Police Services, but may also, or solely, report to the Victim's Advocate for support and assistance. *N.b.* see Clery Act requirements for campus security authorities as mandatory reporters of sexual assault.

### **G. SEXUAL HARASSMENT – EMPLOYEES and STUDENTS**

Any person who has reasonable cause to believe that sexual harassment has occurred is *urged* to immediately bring that information to the attention of the AAEO office.

## CASE SCENARIOS

In a casual conversation with a workstudy student you supervise... she lets you know that her friend's ex-boyfriend keeps text messaging her and won't leave her alone after their breakup.

An Advocat is downtown and witnesses a fight between two guys he knows – he tells you this in passing as he thinks both guys were just drinking too much and both are "kind of jerks" anyway.

A parent calls and informs you that her daughter has been sexually assaulted - she tells you both her daughter's name and the name of the alleged perpetrator, but her daughter doesn't know she is calling.

At a student group meeting you advise, you overhear 2 students talking about how fun it was making other members drink and dress up last night at a party...

A parent who you met during Orientation calls you and lets you know she is concerned that she believes her son has been hazed at one of the fraternities but does not want to disclose which fraternity for fear her son will face backlash from the other members.

A student you academically advise informs you that they keep having to replace the whiteboard on their residence hall door because someone keeps writing "you fag" on it with permanent magic marker.

A coworker lets you know that as she was walking to her car one evening, some guy she has seen around kept yelling at her telling her she is not supposed to park there and "next time she will be sorry".

#### Hate Crime Reporting:

The current regulations require institutions to report as hate crimes any occurrence of criminal homicide, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, arson, and any other crime involving bodily injury reported to local law enforcement agencies or a campus security authority that manifests evidence that the victim was intentionally selected because of the perpetrator's bias. The revised regulations will add the crimes of larceny-theft, simple assault, intimidation, and destruction/damage/vandalism of property to the list of crimes that must be reported in hate crime statistics. The FBI's Uniform Crime Reporting Hate Crime Collection Guidelines will continue to be the source for definitions. All statistics will continue to be reported by Clery geographic area and category of bias.